

217843

JAMES E. HOWARD LLC
ONE THOMPSON SQUARE
SUITE 201
CHARLESTOWN, MA 02129



TEL (617) 886-9322
FAX (617) 886-9324

August 21, 2006

VIA FEDERAL EXPRESS

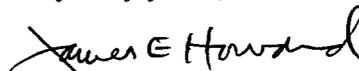
Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20006

Re: Village of Croton-on-Hudson, New York v. Buffalo Southern Railroad, Inc., et al.
Finance Docket No. 34905

Dear Secretary Williams:

On behalf of RS Acquisition Co., LLC and Northeast Interchange Railway, LLC, enclosed for filing are the original and 10 copies of the "Motion of RS Acquisition Co., LLC and Northeast Interchange Railway, LLC to Dismiss Complaint". If you have any questions or need further information, please contact the undersigned. Thank you very much for your attention to this request.

Very truly yours,


James E. Howard

Enclosures

ENTERED
Office of Proceedings
AUG 22 2006
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34905

VILLAGE OF CROTON-ON-HUDSON, NEW YORK

v.

BUFFALO SOUTHERN RAILROAD, INC., et al.

MOTION OF RS ACQUISITION CO., LLC AND
NORTHEAST INTERCHANGE RAILWAY, LLC
TO DISMISS COMPLAINT

James E. Howard
One Thompson Square
Suite 201
Charlestown, MA 02129
Telephone 617-886-9322

John T. McManus
Crane, Parente, Cherubin & Murray
90 State Street
Albany, NY 12207
Telephone 518-432-8000

Attorneys for RS Acquisition Co., LLC and
Northeast Interchange Railway, LLC

Dated: August 21, 2006

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MOTION OF RS ACQUISITION, CO. LLC AND
NORTHEAST INTERCHANGE RAILWAY, LLC
TO DISMISS COMPLAINT

RS Acquisition Co., LLC ("RSA") and Northeast Interchange Railway, LLC ("NIR") hereby request the Board, for the reasons set forth below, to dismiss the Formal Complaint (the "Complaint") filed by the Village of Croton-on-Hudson, New York (the "Village"). RSA and NIR also rely upon the arguments for dismissal set forth in the "Motion to Dismiss Complaint as to Greentree Realty, LLC" dated August 15, 2006.

BACKGROUND

RSA and NIR are both wholly-owned subsidiaries of Regus Industries, LLC ("Regus"). Neither RSA nor NIR holds itself out as a rail carrier or purports to provide rail transportation service.¹ The Village does not contend that either RSA or NIR is a rail carrier.

¹ Last year, NIR filed a notice of exemption concerning proposed rail service in the Village. The notice never became effective.

Buffalo Southern Railroad, Inc. ("BSOR") operates on certain track and property located in the Village (the "Property"). The Property is owned by Greentree Realty, LLC ("Greentree") and is leased to RSA. RSA, in turn, subleases the Property to BSOR.

NIR has obtained permits from the New York State Department of Environmental Conservation and the Westchester County Solid Waste Commission to operate a processing facility at the Property in order to accept construction and demolition debris for subsequent disposal at an out-of-state landfill. NIR was preliminarily enjoined, however, by a decision of the Supreme Court of the State of New York from operating a "transfer station" at the Property without seeking a "special permit" from the Village. Consequently, NIR is currently inactive, and its only assets consist of the permits described above.

The Complaint was filed pursuant to 49 U.S.C. 11701(b), which permits complaints concerning "a violation of this part by a rail carrier providing transportation or service subject to the jurisdiction of the Board under this part." In the Complaint, the Village contends that BSOR requires authorization from the Board pursuant to 49 U.S.C. 10902 in order to operate in Croton, that the current operation is "illegal" and that RSA and NIR are "knowingly authorizing, consenting to or permitting a violation" of section 10902 in contravention of 49 U.S.C. 11901(c). For relief against RSA and NIR, the Village seeks an order, pursuant to 49 U.S.C. 721(b)(4), directing RSA and NIR to "cease and desist" and the imposition of fines pursuant to section 11901(c).

ARGUMENT

The necessary predicate for any valid claim or relief against RSA or NIR is a determination--made in a manner that is binding on RSA and NIR--that BSOR is operating in violation of section 10902. As explained below, while the Board has the ability to enter orders with respect to BSOR, which is a rail carrier providing transportation subject to the Board's jurisdiction, the Board lacks jurisdiction to grant relief against RSA or NIR, which are not rail carriers. Any relief against RSA or NIR must be granted by a Federal District Court in proceedings initiated by the Attorney General.

I. The Board Lacks Jurisdiction to Grant Relief Against RSA or NIR.

Section 11701(b) applies only to complaints concerning alleged violations of Part A of subtitle IV of Title 49 by rail carriers providing transportation subject to the jurisdiction of the Board. Section 11701(b) does not provide any authority for the Board to consider complaints concerning alleged violations of Part A by persons that are not rail carriers providing transportation subject to the jurisdiction of the Board. Consequently, the Board lacks jurisdiction pursuant to section 11701(b) to enter any relief against RSA or NIR, and the Complaint must, therefore, be dismissed.

Even if it is assumed, contrary to the allegation of the Village, that the Complaint is being brought pursuant to section 11901(c), there is still no basis for the Village to file such a complaint with the Board. Section 11901 provides for civil penalties that are payable to the United States Government. Section 11901 does not create any private cause of action. Not surprisingly, therefore, only the Attorney General may bring such an

action, and jurisdiction lies in the federal district courts, not at the Board. 28 U.S.C. 1337(a); 49 U.S.C. 11703.

II. There is No Basis for a Cease and Desist Order.

The Complaint is equally deficient, and should be dismissed as to RSA and NIR, with respect to the request for a cease and desist order pursuant to 49 U.S.C. 721(b)(4).² The issuance of such an order against RSA and NIR depends upon a series of assumptions that must be fulfilled and events that must occur even before consideration of a cease and desist order would be timely. The prerequisites for consideration of such an order include a determination--that is binding on RSA and NIR--that BSOR has violated section 11902 and, in addition, a determination by a court that RSA and NIR knowingly consented to or permitted such a violation.

Even assuming that such findings were possible, a conclusion with which RSA and NIR strongly disagree, and that the matter were somehow again before the Board, there would still be no grounds for the issuance of a cease and desist order. In order to grant relief pursuant to 49 U.S.C. 721(b)(4), the Board must find that such relief is necessary to "prevent irreparable harm". In this case, however, the Village has not even alleged that rail operations by BSOR at the Property or any activities of RSA or NIR could conceivably cause irreparable harm. Moreover, there would be no harm, much less irreparable harm, whether BSOR is operating "illegally" as contended by the Village or whether such operations are beyond the licensing authority of the Board pursuant to 49 U.S.C. 10906. Finally, even if the necessary predicate for considering relief against RSA and NIR should occur (i.e., a binding determination that BSOR is operating illegally), it

² For purposes of this discussion, it is assumed, but not conceded, that section 721 affords the Board authority to enter orders against entities that are not rail carriers providing transportation subject to the Board's jurisdiction.

would be illogical and inappropriate to assume that BSOR would continue to operate illegally, and therefore any request for a cease and desist order against RSA and NIR would be moot.

III. Alternatively, the Complaint Should be Dismissed on Practical Grounds.

Pursuant to section 11901(c), the maximum civil penalty that may be assessed against RSA or NIR after trial and an adverse verdict would be \$5,000 each. In contrast to the penalties provided under subsections (a), (b), (d) and (e) of section 11901, which may be assessed separately for each day that the violation continues, subsection (c) provides simply for a "civil penalty of not more than \$5,000."

In the event that the Board does not dismiss the Complaint for the reasons discussed above, RSA and NIR each hereby offer to pay \$5,000 to the United States Government if the Board dismisses the Complaint, with the consent of the Attorney General, pursuant to an order providing that such payments would be made without any admission of any conduct in violation of any statute or regulation. The cost to the United States Government to prosecute, and to RSA and NIR to defend, the Complaint on the "merits" through a decision by a district court would be far greater than the \$5,000 maximum amount that might be collected by the Government. In such circumstances, the practical resolution suggested above would be in the best interests of all parties if the Board does not otherwise dismiss the Complaint.

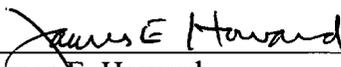
CONCLUSION

For the reasons stated above, the Complaint should be dismissed with prejudice as it applies to RSA and NIR. If, however, the Board denies this Motion or defers a decision, it should nonetheless bifurcate the case so that discovery and submission of a

record with respect to any claims against RSA and NIR are deferred until a resolution of the claims against BSOR. Stated differently, it would be a tremendous waste of time and resources to proceed with any claims against RSA and NIR unless and until it has been determined that BSOR violated section 10902.

Respectfully submitted,

RS ACQUISITION CO., LLC and
NORTHEAST INTERCHANGE RAILWAY, LLC



James E. Howard
One Thompson Square
Suite 201
Charlestown, MA 02129
Telephone 617-886-9322

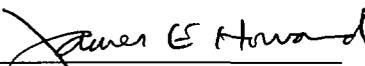
John T. McManus
Crane, Parente, Cherubin & Murray
90 State Street
Albany, NY 12207
Telephone 518-432-8000

Attorneys for RS Acquisition Co., LLC and
Northeast Interchange Railway, LLC

Dated: August 21, 2006

Certificate of Service

I hereby certify that I have served the foregoing pleading by sending a copy via Federal Express on August 21, 2006 to Michael B. Gerrard, Arnold & Porter LLP, 399 Park Ave., New York, NY 10022-4690, Nicholas Caputo, 1345 Ave. of the Americas, New York, NY 10105 and William A. Mullins, 2401 Pennsylvania Ave., N.W., Suite 300, Washington, DC 20037.



James E. Howard